



DEPARTMENT OF AGRICULTURE

Billing Code 3410-90P

Office of the Secretary

2 CFR Part 421 and 7 CFR Part 3021

RIN 0505AA14

Implementation of Office of Management and Budget Guidance on Drug-Free Workplace Requirements

AGENCY: Office of the Secretary, USDA.

ACTION: Direct final rule.

SUMMARY: The Department of Agriculture (USDA) is removing its regulation implementing the Governmentwide common rule on drug-free workplace requirements for financial assistance, currently located within part 3021 of Title 7 of the Code of Federal Regulations (CFR), and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance at 2 CFR part 182. This regulatory action implements OMB's initiative to streamline and consolidate into one title of the CFR all Federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that would make no substantive change in USDA's policy or procedures for drug-free workplace.

DATES: This direct final rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action. Submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] on any unintended changes this action makes in USDA's policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, USDA will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments, identified by docket number and/or RIN Number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: james.mcstay@cfo.usda.gov. Include [docket number and/or RIN number] in the subject line of the message.
- Fax: James McStay at (202) 690-1529.
- Mail: OCFO/CTGPD, Room 3409-A, Stop 9010, 1400 Independence Avenue, SW, Washington, DC 20250-9010.
- Hand Delivery/Courier: OCFO/CTGPD, Room 3409-A, 1400 Independence Avenue, SW, Washington, DC 20250.

All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: James McStay, (202) 720-0589, E-mail: james.mcstay@cfo.usda.gov; or Steve Lowery, (202) 720-1568, E-mail: steve.lowery@osec.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.) as a part of omnibus drug legislation. Federal agencies issued an interim final common rule to implement the Act as it applied to grants (53 FR 4946, January 31, 1989). The rule was a subpart of the Governmentwide common rule on nonprocurement suspension and debarment. The agencies issued a final common rule after consideration of public comments (55 FR 21681, May 25, 1990).

The agencies proposed an update to the drug-free workplace common rule in 2002 (67 FR 3266, January 23, 2002) and finalized it in 2003 (68 FR 66534, November 26, 2003). The updated common rule was redrafted in plain language and adopted as a separate part, independent from the common rule on nonprocurement suspension and debarment. Based on an amendment to the drug-free workplace requirements in 41 U.S.C. 702 (Pub. L. 105-85, div. A, title VIII, Sec. 809, Nov. 18, 1997, 111 Stat. 1838), the update also allowed multiple enforcement options from which agencies could select, rather than requiring use of a certification in all cases.

When it established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and agreements (69 FR 26276, May 11, 2004), OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing (70 FR 51863, August 31, 2005) and finalizing (71 FR 66431, November 15, 2006) Governmentwide guidance on nonprocurement suspension and debarment in 2 CFR part 180.

As the next step in that process, OMB proposed for comment (73 FR 55776, September 26, 2008) and finalized (74 FR 28149, June 15, 2009) Governmentwide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance requires each agency to replace the common rule on drug-free workplace requirements that the agency previously issued in its own CFR title with a brief regulation in 2 CFR adopting the Governmentwide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it collocates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

The Current Regulatory Actions

As the OMB guidance requires, USDA is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 7 CFR part 3021. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 421 to adopt the Governmentwide policies and procedures in the OMB guidance.

Invitation to Comment

Taken together, these regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the common rule at 7 CFR part 3021.

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553), agencies generally propose a regulation and offer interested parties the opportunity to comment before it becomes effective.

However, as described in the “Background” section of this preamble, the policies and procedures in this regulation have been proposed for comment two times—one time by federal agencies as a common rule in 2002 and a second time by OMB as guidance in 2008—and adopted each time after resolution of the comments received.

This direct final rule is solely an administrative simplification that would make no substantive change in the USDA policy or procedures for drug-free workplace. We therefore believe that the rule is noncontroversial and do not expect to receive adverse comments, although we are inviting comments on any unintended substantive change this rule makes.

Accordingly, we find that the solicitation of public comments on this direct final rule is unnecessary and that “good cause” exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless we receive adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If we receive any comment on unintended changes is received, we will consider it and, if warranted, we will publish a timely revision of the rule.

Executive Order 12866

OMB has determined this rule to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104-4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

2 CFR Part 421

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

7 CFR Part 3021

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, the Department of Agriculture amends the Code of Federal Regulations, Title 2, Subtitle B, chapter IV, and Title 7, chapter XXX, part 3021, as follows:

Title 2 – Grants and Agreements

Chapter IV — Department of Agriculture

1. Add part 421 in Subtitle B, Chapter IV, to read as follows:

PART 421 – REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

- 421.10 What does this part do?
- 421.20 Does this part apply to me?
- 421.30 What policies and procedures must I follow?

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

421.225 Whom in the USDA does a recipient other than an individual notify about a criminal drug conviction?

Subpart C— Requirements for Recipients Who Are Individuals

421.300 Whom in the USDA does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

421.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E— Violations of this Part and Consequences

421.500 Who in the USDA determines that a recipient other than an individual violated the requirements of this part?

421.505 Who in the USDA determines that a recipient who is an individual violated the requirements of this part?

Authority: 41 U.S.C. 701-707.

§421.10 What does this part do?

This part requires that the award and administration of USDA grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701-707, as amended, hereafter referred to as “the Act”) that applies to grants. It thereby--

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for USDA’s grants and cooperative agreements; and

(b) Establishes USDA policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

§421.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a--

(a) Recipient of a USDA grant or cooperative agreement; or

(b) USDA awarding official.

§421.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§421.225	Whom in the USDA a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 2 CFR 182.300(b)	§421.300	Whom in the USDA a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
(3) 2 CFR 182.500	§421.500	Who in the USDA is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
(4) 2 CFR 182.505	§421.505	Who in the USDA is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in

paragraph (b) of this section, USDA policies and procedures are the same as those in the OMB guidance.

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§421.225 Whom in the USDA does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the awarding official for each USDA agency from which the recipient currently has an award.

Subpart C—Requirements for Recipients Who Are Individuals

§421.300 Whom in the USDA does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual that is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the awarding official for each USDA agency from which the recipient currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§421.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 421, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

Subpart E—Violations of this Part and Consequences

§421.500 Who in the USDA determines that a recipient other than an individual violated the requirements of this part?

The Secretary of Agriculture and the Secretary's designee or designees are authorized to make the determination under 2 CFR 182.500.

§421.505 Who in the USDA determines that a recipient who is an individual violated the requirements of this part?

The Secretary of Agriculture and the Secretary's designee or designees are authorized to make the determination under 2 CFR 182.505.

Title 7—Agriculture

Chapter XXX—Office of the Chief Financial Officer, Department of Agriculture

Part 3021—[REMOVED]

2. Remove Part 3021.

Approved:

_____	__October 26, 2011__
Pearlie S. Reed	DATE
Assistant Secretary	
for Administration	

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